

**TESTIMONY
of
KEONI KEALOHA AGARD**

**Federal Hearings/Reconciliation Process
December 10 & 11, 1999
East West Center (UH Manoa)
8:00 a.m- 6:00 p.m.**

Aloha John Berry and honored guests:

I am Keoni Kealoha Agard. I am a Native Hawaiian attorney licensed to practice law in the state and federal courts within the State of Hawaii with an emphasis on Native Hawaiian Rights. My first exposure to land title research was as a law student beginning in 1974 which evolved to legal research papers on Hawaiian land and sovereignty. I have engaged extensively in land title litigation on behalf of Native Hawaiians to defend and recover ancestral lands in numerous quiet title actions since 1981.

I was elected in January 1999 in a worldwide election as a delegate from the Ko'olaupoko moku to the Aha Hawai'i 'O'iwi (Native Hawaiian Convention, (NHC), whose purpose is to propose a government of our own choosing. I serve as its First Vice President. Our Chairman will be providing testimony on behalf of the NHC at this hearing with regard to an existing process to restore a political entity that will possess the authority to speak on our behalf as a nation. However, for today's hearing, I am presenting testimony on behalf of myself and my family members. I must provide an important caveat to preface my substantive comments in the points listed below.

1. Special Appearance- We Do Not Submit To Jurisdiction of U.S.

As to political status, we are not in favor of any form of integration or free association. We do support the assertion of our claim to full independence. As such, we do not submit to the jurisdiction of the United States by participating in this reconciliation hearing process. Instead, we make a special appearance to advise the federal government of our position with regard to this process.

2. Proper Party Must Come To The Table

We insist that the proper party, the Department of State, (the U.S. agency responsible for international/foreign affairs) come to the table to initiate government to government negotiations to resolve the international dispute of treaty violations committed by the U.S. in 1893 as well as the unlawful seizure (by

way of an alleged annexation) of our nation in 1898. There can be no true reconciliation in the absence of this demand being fully implemented.

3. No Waiver of Right to Assert Independence

Any results or final recommendations coming out of the reconciliation hearing process shall not constitute a waiver of our right to assert full independence as our preferred political status.

4. No Final Settlement

Any results or final recommendations coming out of the reconciliation hearing process shall not constitute a final settlement of any claim(s) held by the nation Kingdom of Hawai'i. We reserve our right as a nation to seek proper reconciliation before the appropriate international forum(s).

5. Satisfying the Continuing Obligation of U.S. to Native Hawaiians Does Not Mean the U.S. Has Met Its Commitment to Reconciliation

Any results or final recommendations coming out of the reconciliation hearing process that addresses the support for health, education, language and housing programs currently enjoyed by Native Hawaiians represents a "continuing obligation" that the U.S. government must exercise in order to fulfill its existing trust responsibility to Native Hawaiians, and does not constitute the full measure of what we consider as complete reconciliation.

Hawaiian Land and Natural Resources

There is an estimated 1.8 million or more acres of lands (so called "ceded lands") that were illegally seized by the U.S. government from the nation Kingdom of Hawai'i at the time of purported annexation in 1898. They must be returned. References to these ancestral lands are made in Public Law 103-150, November 23, 1993, 103D Congress, S.J.Res.19, that states in part that:

Whereas, the Republic of Hawaii also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government;

Whereas, the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the the United States...;

Whereas, the health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land;

Whereas, the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory...;

In short, a resolution must be reached to address the matters contained in these whereas clauses. The issue is when and how will these ancestral lands be returned? What steps need to be examined, then implemented to achieve the desired results?

Conflict in Terminology

In times of old, we were known as Kanaka Hawai'i Maoli. This term has been replaced by the U.S. government through the enactment of various laws by imposing the Western world's own choice of the term "Native Hawaiian(s)". This term has divided our community because it creates a division of "haves" and "have nots". It dictates who receives benefits and who does not. The definition of who we are must be determined by our own, not by the U.S. govt.

Congressional and State Legislative Path

Indian nations have addressed land claims issues by going to the U.S. Congress in the past as one alternative. What options are available to us in Hawai'i? Approximately 400,000 acres or more is currently held by the U.S. government, with the remaining 1.4 million acres or more transferred to the State of Hawaii in 1959 at time of Statehood. The return would require the U.S. Congress and the State Legislature to enact laws to execute the transfer. Although the federal government no longer holds those lands it transferred in 1959 to the State, arguable the federal government has a continuing obligation and responsibility to ensure the proper and complete return of all ceded lands. Whether the federal government can now compel the State of Hawaii to return said lands is an issue that needs careful clarification.

Presidential Executive Order

A preferred method of transfer is that immediate steps be taken to have President William Clinton issue an executive order to return all ceded lands. An agreement can be reached on what interim entity will hold/receive and administer such lands until a government of our own choosing is restored and in place. Serious discussions on how this can be accomplished must ensue.

Because of the limited time I had in order to prepare this preliminary testimony, I reserve the right to further supplement the record by submitting additional testimony prior to the January 2000 deadline.

Thank you for this opportunity to present this testimony for the record.

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November 26, 1999

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Assistant Secretary John Berry
c/o Document Management Unit
The Department of the Interior
1849 C. Street, NW Mailstop-7229
Washington, D.C. 20240

Re: Transmittal of Testimony for Federal Hearings on
Reconciliation Process for December 10-11, 1999, in Honolulu

Dear Secretary Berry:

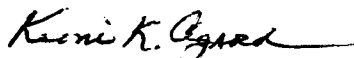
Attached is our testimony for the record in preparation for the hearings set for December 10-11, 1999, in Honolulu, Hawaii.

The Royal Order of Kamehameha I (ROOK) was founded in 1865 by King Kamehameha V, ruling monarch of Hawai'i. We are the oldest Hawaiian organization (nearly 135 years old) still in existence today. We request that we be designated as a panelist at the upcoming hearings.

One of our members, Keoni K. Agard, is authorized to present our group's testimony as of this morning pursuant by directive of Ali'i Nui Gabriel Makuakane, head of the ROOK. Mr. Agard has also separately transmitted his individual testimony asking to be a panelist in his individual capacity. We request that we both be designated as panelists. Please advise.

You can reach our designated contact person, the undersigned, at (808) 261-4751 phone/fax. Thank you for your kind attention.

Sincerely,



Keoni K. Agard
Authorized Representative
Royal Order of Kamehameha I

cc: Ali'i Nui
Ku'auhau Nui

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**TESTIMONY
of
ROYAL ORDER OF KAMEHAMEHA I**

**Federal Hearings/Reconciliation Process
December 10 & 11, 1999
East West Center (UH Manoa)
8:00 a.m- 6:00 p.m.**

Aloha John Berry and honored guests:

I am Keoni Kealoha Agard. I have been authorized to speak on behalf of the Royal Order of Kamehameha I (ROOK), which is headed by Ali'i Nui Gabriel Makuakane. The ROOK was established in 1865 by King Kamehameha V for purposes that include: 1) to preserve and perpetuate the ancient customs and traditions of Hawai'i, 2) to infuse the spirit of patriotism, and 3) to encourage and develop leadership. Our membership, including spouses total over (500) five hundred with chapters located in each of the four counties (Hawai'i, Maui, Oahu, and Kauai) throughout the State of Hawai'i.

Others today will speak on a process to restore a political entity that will possess the authority to speak on our behalf as a nation. However, for today's hearing, we speak only on behalf of our membership. We must provide an important caveat to preface our substantive comments before we begin.

1. **Special Appearance- We do Not submit to the jurisdiction of the United States of America**

As to political status, we assert that the Kingdom of Hawai'i continues to exist (see attached resolution). As such, we do not submit to the jurisdiction of the United States by participating in this reconciliation hearing process. Instead, we make a special appearance to advise the federal government of our position with regard to this process.

2. **The Kingdom of Hawai'i continues to exist**

Prior to 1893, the United States recognized the territorial dominion of the Kingdom of Hawai'i by entering into at least five distinct international treaties with the Kingdom of Hawai'i. In addition, at least 20 foreign countries signed treaties and conventions with the Kingdom of Hawai'i recognizing its status as an independent state on equal footing with all the world powers.

In 1993, the Royal Order of Kamehameha I passed a resolution in Grand Council stating that the Kingdom of Hawai'i continues to exist. We re-affirm that statement. Such statement is based on the fact that no treaty of

annexation was ever approved or ratified between the Kingdom of Hawai'i and the United States of America. The U.S. Constitution requires a 2/3 vote by the U.S. Senate in order to ratify a treaty. No such vote was ever secured by the U.S. Senate at any time in history. Moreover, the native population organized in 1897 in protest by signing over 38,000 signatures to oppose annexation to the United States. The puppet government of the self-declared Republic of Hawai'i did not have the popular support of the people. It was neither a de facto nor de jure government and thus had no authority whatsoever when it purportedly ceded the sovereignty of the Kingdom of Hawai'i to the U.S. without the support of the people in 1898.

The governing body of the Kingdom of Hawai'i was destroyed when the U.S. took over unlawfully in 1898. That governing entity must be re-established and put back in its rightful place. We support the efforts of those in our community that are making strides to restore the nation. Despite the temporary displacement of our governing body, we, as a people, continue to exist. Indeed, the Kingdom of Hawai'i continues to exist.

3. Return all ceded lands
Hawaiian Land and Natural Resources

There is an estimated 1.8 million or more acres of lands (so called "ceded lands") that were illegally seized by the U.S. government from the nation Kingdom of Hawai'i at the time of purported annexation in 1898. They must be returned. References to these ancestral lands are made in Public Law 103-150, November 23, 1993, 103D Congress, S.J.Res.19, that states in part that:

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Congressional and State Legislative Path

Indian nations have addressed land claims issues by going to the U.S. Congress in the past as one alternative. What options are available to us in Hawai'i? Approximately 400,000 acres or more is currently held by the U.S. government, with the remaining 1.4 million acres or more transferred to the State of Hawaii in 1959 at time of Statehood. The return would require the U.S. Congress and the State Legislature to enact laws to execute the transfer. Although the federal government no longer holds those lands it transferred in 1959 to the State, arguable the federal government has a continuing obligation and responsibility to ensure the proper and complete return of all ceded lands. Whether the federal government can now compel the State of Hawaii to return said lands is an issue that needs careful clarification.

Presidential Executive Order

A preferred method of transfer is that immediate steps be taken to have President William Clinton issue an executive order to return all ceded lands. An agreement can be reached on what interim entity will hold/receive and administer such lands until a government of our own choosing is restored and in place. Serious discussions on how this can be accomplished must ensue.

4. Compel State of Hawai'i to comply with its obligations under Section 5(f)

As a precondition for admission into the Union, the State of Hawai'i and its people accepted certain responsibilities for native Hawaiians as set forth in Section 5(f). Under the provisions of the Statehood Act, P.L. 86-3, passed March 18, 1959, the State is required to set aside ceded land revenues for certain purposes, including "for the betterment of the conditions of native Hawaiians". Under current State law 20% of all monies collected by the State on ceded lands are required to be paid to the Office of Hawaiians Affairs (OHA). The State has failed to comply with its legal mandate thus forcing OHA to file suit. Long standing litigation is still pending, as the State continues to drag its feet in complying with its promises to pay as required by law.

How can the federal government help native Hawaiians in this regard? We request that the federal government take immediate measures to compel the State to comply with its moral and legal commitment to fully implement its responsibilities to the native Hawaiian people.

5. Fund the process to restore a government

Kanaka Hawai'i Maoli are currently in the process of re-establishing and restoring a government of their own choosing. How can the federal government help native Hawaiians in this regard? We request that the federal

government take immediate steps to adequately fund the process to enable Kanaka Hawai'i Maoli to exercise their rights to self-determination to re-establishment a political entity that can speak on behalf of the nation. Until that political entity is re-established, the federal government will be forced to deal with a multitude of numerous groups.

The Hawaiian self-determination movement is far from a fringe effort. Its basic emotional and philosophical appeal has been endorsed by the very core of established Hawaiian society including the Royal Order of Kamehameha I (see attached editorial dated 1/10/95).

Because of the limited time we had in order to prepare this preliminary testimony, we reserve the right to further supplement the record by submitting additional testimony prior to the January 2000 deadline.

Thank you for this opportunity to present this testimony for the record.

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